

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**CHRISTINE DONLON, on Behalf of All  
Others Similarly Situated,**

**Plaintiff,**

**-v.-**

**MERRILL LYNCH & CO., INC., E.  
STANLEY O'NEAL, CAROL T. CHRIST,  
ARMANDO M. CODINA, VIRGIS W.  
COLBERT, JILL K. CONWAY, ALBERTO  
CRIBIORE, LOUIS DIMARIA , JOHN D.  
FINNEGAN, JUDITH MAYHEW JONAS,  
AULANA L. PETERS, JOSEPH W.  
PRUEHER, ANN N. REESE, CHARLES O.  
ROSSOTTI, JOHN DOES 1-20 (BEING  
CURRENT AND FORMER MEMBERS OF  
THE BENEFITS ADMINISTRATION  
COMMITTEE OF THE MERRILL LYNCH  
& CO., INC. EMPLOYEE STOCK  
OWNERSHIP PLAN) and JOHN DOES 21-  
40 (BEING CURRENT AND FORMER  
MEMBERS OF THE INVESTMENT  
COMMITTEE OF THE MERRILL LYNCH  
& CO., INC. EMPLOYEE STOCK  
OWNERSHIP PLAN),**

**Defendants.**

**Civil Action No.: 07-CV-10661 (LBS)**

**ELIZABETH ESTEY, individually and on  
behalf of all others similarly situated,**

**Plaintiff,**

**-v.-**

**MERRILL LYNCH & CO., INC., E.  
STANLEY O'NEAL, CAROL T. CHRIST,  
ARMANDO M. CODINA, VIRGIS W.  
COLBERT, JILL K. CONWAY, ALBERTO  
CRIBIORE, JOHN D. FINNEGAN, JUDITH  
MAYHEW JONAS, DAVID K.  
NEWBIGGING, AULANA L. PETERS,  
JOSEPH W. PRUEHER, ANN N. REESE,  
CHARLES O. ROSSOTTI, LOUIS  
DIMARIA, PETER STINGI and JOHN  
AND JANE DOES 1-20,**

**Defendants.**

**Civil Action No.: 07-CV-10268 (DC)**

**MARY GIDARO, individually and on behalf  
of all others similarly situated,**

**Plaintiff,**

**-v.-**

**MERRILL LYNCH & CO., INC.; STAN  
O'NEAL; LOU DIMARIA; INVESTMENT  
COMMITTEE OF THE MERRILL LYNCH  
SAVINGS AND INVESTMENT PLAN;  
ADMINISTRATIVE COMMITTEE OF  
THE MERRILL LYNCH SAVINGS AND  
INVESTMENT PLAN and JOHN DOES 1-  
30,**

**Defendants.**

**Civil Action No.: 07-CV-10273 (LBS)**

**TARA MOORE, individually and on behalf  
of all others similarly situated,**

**Plaintiff,**

**-v.-**

**MERRILL LYNCH & CO., INC.,  
MERRILL LYNCH & CO., INC. PLAN  
“INVESTMENT COMMITTEE,”  
MERRILL LYNCH & CO., INC. PLAN  
ADMINISTRATIVE COMMITTEE,  
MERRILL LYNCH & CO., INC.  
MANAGEMENT DEVELOPMENT AND  
COMPENSATION COMMITTEE, LOUIS  
DIMARIA, E. STANLEY O’NEAL,  
ALBERTO CRIBIORE, ARMANDO M.  
CODINA, VIRGIS W. COLBERT, JOHN D.  
FINNEGAN, AULANA L. PETERS and  
JOHN DOES 1-10,**

**Defendants.**

**Civil Action No.: 07-CV-10398 (DC)**

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**GREGORY YASHGUR, individually and on  
behalf of all others similarly situated,**

**Plaintiff,**

**-v.-**

**MERRILL LYNCH & CO., INC.,  
ADMINISTRATIVE COMMITTEE OF  
THE MERRILL LYNCH & CO., INC. 401K  
SAVINGS AND INVESTMENT PLAN,  
JOHN D. FINNEGAN, JUDITH JONAS  
MAYHEW, AULANA L. PETERS, JOSEPH  
W. PRUEHER, ANN N. REESE, CHARLES  
O. ROSSITTI, LOUIS DIMARIA, STAN  
O'NEAL, ALBERTO CRIBIORE, CAROL  
T. CHRIST, ARMANDO M. CODINA,  
VIRGIS W. COLBERT and JOHN DOES,**

**Defendants.**

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**Civil Action No.: 07-CV-10569 (JSR)**

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**CARL ESPOSITO, individually and on  
behalf of all others similarly situated,**

**Plaintiff,**

**-v.-**

**MERRILL LYNCH & CO., INC., E.  
STANLEY O'NEAL, CAROL T. CHRIST,  
ARMANDO M. CODINA, VIRGIS W.  
COLBERT, JILL K. CONWAY, ALBERTO  
CRIBIORE, JOHN D. FINNEGAN, JUDITH  
MAYHEW JONAS, DAVID K.  
NEWBIGGING, AULANA L. PETERS,  
JOSEPH W. PRUEHER, ANN N. REESE,  
CHARLES O. ROSSOTTI, LOUIS  
DIMARIA, PETER STINGI and JOHN  
AND JANE DOES 1-20,**

**Defendants.**

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**Civil Action No.: 07-CV-10687 (JGK)**

**SEAN SHAUGHNESSEY, individually and  
on behalf of all others similarly situated,**

**Plaintiff,**

**-v.-**

**MERRILL LYNCH & CO., INC.,  
MERRILL LYNCH & CO., INC.  
INVESTMENT COMMITTEE,  
MANAGEMENT DEVELOPMENT AND  
COMPENSATION COMMITTEE OF THE  
MERRILL LYNCH & CO., INC. BOARD  
OF DIRECTORS, THE MERRILL LYNCH  
TRUST COMPANY, FSB,  
ADMINISTRATIVE COMMITTEE OF  
THE MERRILL LUNCH & CO., INC. 401K  
SAVINGS AND INVESTMENT PLAN,  
LOUIS DIMARIA, ARMANDO M.  
CODINA, VIRGIS W. COLBERT,  
ALBERTO CRIBIORE, JOHN D.  
FINNEGAN, AULANA L. PETERS and  
JOHN DOES 1-40,**

**Defendants.**

**Civil Action No.: 07-CV-10710 (GEL)**

**BARBARA BOLAND, individually and on  
behalf of all others similarly situated,**

**Plaintiff,**

**-v.-**

**MERRILL LYNCH & CO., INC., E.  
STANLEY O'NEAL, CAROL T. CHRIST,  
ARMANDO M. CODINA, VIRGIS W.  
COLBERT, JILL K. CONWAY, ALBERTO  
CRIBIORE, JOHN D. FINNEGAN, JUDITH  
MAYHEW JONAS, DAVID K.  
NEWBIGGING, AULANA L. PETERS,  
JOSEPH W. PRUEHER, ANN N. REESE,  
CHARLES O. ROSSOTTI and JOHN AND  
JANE DOES 1-20,**

**Defendants.**

**Civil Action No.: 07-CV-11054 (MGC)**

**PLAINTIFF CHRISTINE DONLON'S [PROPOSED] PRETRIAL ORDER NO. 1  
CONSOLIDATING THE ERISA ACTIONS AND  
APPOINTING INTERIM LEAD PLAINTIFF AND INTERIM LEAD COUNSEL**

**WHEREAS**, the above-referenced actions (collectively, the "ERISA Actions"), allege breaches of fiduciary duties by Merrill Lynch & Co. Inc. ("Merrill Lynch" or the "Company") and various related fiduciaries in violation of the Employee Retirement Income Security Act ("ERISA") involving the Merrill Lynch 401(k) Saving and Investment Plan, the Retirement Accumulation Plan and the Employee Stock Ownership Plan (the three plans treated under a single umbrella by Merrill Lynch and referred to collectively herein as the "Plan"), established as a benefit for the Company's employees, and such actions involve common questions of law and fact;

**WHEREAS**, appointment of Interim Lead Plaintiff and Lead Counsel is appropriate and consistent with the recommendations of the Manual for Complex Litigation (4th ed. 2004) and Fed. R. Civ. P. 23(g)(2);

**NOW, THEREFORE, THE COURT ORDERS** as follows:

### **I. CONSOLIDATION OF RELATED ACTIONS**

The ERISA Actions and any action arising out of the same operative facts now pending or hereafter filed in or transferred to this Court are hereby consolidated pursuant to Fed. R. Civ. P. 42(a) (“Consolidated Action”). They shall be referred to collectively as *In re Merrill Lynch ERISA Litigation*, Master File No. 07-CV-10268 (LBS).

### **II. CAPTION OF CASES**

Every pleading filed in the Consolidated Action shall bear the following caption:

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE MERRILL LYNCH	)	
ERISA LITIGATION	)	MASTER FILE: 07-CV-10268 (LBS)
	)	
THIS DOCUMENT RELATES TO:	)	
	)	
	)	

When a pleading or other court paper filed in the Consolidated Action is intended to apply to all actions therein, the words “All Actions” shall appear immediately after the words “THIS DOCUMENT RELATES TO:” in the caption set out above. When a pleading or other court paper is intended to be applicable to less than all such actions, the party filing the document shall indicate, immediately after the words “THIS DOCUMENT RELATES TO:” the action(s) to which the

document is intended to be applicable by last name of the plaintiff(s) and the docket number(s).

### **III. MASTER DOCKET**

A Master Docket is hereby established for the Consolidated Action, including actions subsequently consolidated herein pursuant to this Order. Entries in said Master Docket shall be applicable to the Consolidated Action, and entries shall be made therein in accordance with the regular procedures of the Clerk of this Court, except as modified by this Order.

When a pleading is filed and the caption, pursuant to this Order, shows that it is applicable to "All Actions," the Clerk shall file such pleading in the Master File and note such filing in the Master Docket. No further copies need be filed nor other docket entries made.

When a paper is filed and the caption shows that it is applicable to fewer than All Actions, the Clerk shall file the original of the paper in the Master File and a copy in the file of each separate action to which it applies and shall note such filing in the Master Docket and in the docket of each separate action. The party filing such paper shall supply the Clerk with sufficient copies of any such paper to permit compliance with this paragraph.

### **IV. MASTER FILE AND SEPARATE ACTION FILES**

A Master File is hereby established for the consolidated proceedings in the Consolidated Action. The Master File shall be Civil Action No. 07-CV-10268 (LBS). The original of this Order shall be filed by the Clerk in the Master File herein established. The Clerk shall maintain a separate file for each action consolidated herein and filings shall be made in accordance with the regular procedures of the Clerk of this Court, except as modified by this Order. The Clerk shall file a copy of this Order in each such separate file. The Clerk shall mail a copy of this Order to counsel of record in each of the actions consolidated herein.



#### **V. NEWLY FILED OR TRANSFERRED ACTIONS**

When a case that arises out of the same operative facts as the Consolidated Action is hereinafter filed in or transferred to this Court, it shall be consolidated as provided in Section I above and the Clerk of this Court shall:

- (a) File a copy of this Order in the separate file for such action;
- (b) Mail a copy of this Order to the attorneys for the plaintiff(s) in the newly-filed or transferred case and to any new defendant(s) in the newly-filed or transferred case; and
- (c) Make the appropriate entry in the Master Docket.

The Court requests the assistance of counsel in calling to the attention of the Clerk of this Court the filing or transfer of any case that might properly be consolidated as part of this litigation.

#### **VI. APPLICATION OF THIS ORDER TO SUBSEQUENT CASES**

This Order shall apply to each class action assigned to the undersigned alleging claims similar to those set forth in these actions and brought on behalf of participants in or beneficiaries of the Plan. This Order shall apply to each such case which is subsequently filed in or transferred to this Court, and which is assigned to the undersigned, unless a party objecting to the consolidation of that case or to any other provision of this Order serves an application for relief from this Order or from any of its provisions within ten (10) days after the date on which the Clerk mails a copy of this Order to the counsel of that party. The provisions of this Order shall apply to such action pending the Court's ruling on the application.

Unless a plaintiff in a subsequently filed or transferred case is permitted by the Court to use a separate complaint, defendants shall not be required to answer, plead or otherwise move with respect to that complaint. If a plaintiff in any such case is permitted to use a separate complaint, each defendant shall have thirty (30) days from the date the Court grants such permission within which to

answer, plead or otherwise move with respect to that complaint.

#### **VII. APPOINTMENT OF INTERIM LEAD PLAINTIFF**

The Court appoints Plaintiff Christine Donlon as Interim Lead Plaintiff in the ERISA Actions and all subsequently filed, related actions consolidated herewith. The Court shall make a final determination regarding the identity of Lead Plaintiff(s)/Class Representative(s) on Plaintiff's motion for class certification, or otherwise as the Court deems necessary and appropriate. The Interim Lead Counsel as identified below may identify different or additional Lead Plaintiff(s)/Class Representative(s) at such time as it moves for class certification in this litigation.

#### **VIII. APPOINTMENT OF INTERIM LEAD COUNSEL**

The Court designates Harwood Feffer LLP to act as Interim Lead Counsel for the plaintiffs in the ERISA Actions and all subsequently filed, related actions consolidated herewith, with the responsibilities hereinafter described.

Lead Counsel shall have the authority over the following matters on behalf of all plaintiffs in the Consolidated Action in consultation with Lead Plaintiff:

- a) directing, coordinating, and supervising the prosecution of plaintiffs' claims in the Consolidated Action;
- b) appointing working committees (e.g., "Discovery Committee") of plaintiffs' counsel who will (1) assist in the conduct of the litigation, and (2) consult with the Lead Counsel on all litigation matters and the performance of such work assignments as are delegated to them by Lead Counsel;
- c) retaining experts;
- d) communicating with the Court;

- e) communicating with defense counsel;
- f) conducting settlement negotiations;
- g) collecting and reviewing time and expense records from all plaintiffs' counsel;
- h) maintaining communication and promoting efficient and harmonious dealings among all plaintiffs' counsel; and
- i) coordinating activities to avoid duplication and inefficiency in the filing, serving and/or implementation of pleadings, other court papers, discovery papers, and discovery practice, and, generally, in the litigation.

No motion shall be initiated or filed on behalf of any plaintiff in the Consolidated Action except through Lead Counsel.

All plaintiffs' counsel shall keep contemporaneous time and expense records and shall provide such records upon request to Lead Counsel.

Lead Counsel is appointed Interim Lead Counsel for the putative plaintiff class(es) pursuant to Rule 23(g)(2)(A) of the Federal Rules of Civil Procedure in the above-captioned cases.

#### **IX. SCOPE OF ORDER**

The terms of this Order shall not have the effect of making any person, firm or entity a party to any action in which he, she or it has not been named, served or added as such in accordance with the Federal Rules of Civil Procedure. The terms of this Order and the consolidation ordered herein shall not constitute a waiver by any party of any claims or defenses to any action.

## **X. PRELIMINARY SCHEDULE OF PROCEEDINGS**

To the extent that they have not already done so, Lead Counsel and counsel for the defendants shall confer regarding the timing of plaintiffs' Consolidated Complaint and defendants' response thereto, including briefing of any motion(s) by any defendant(s) directed at the Consolidated Complaint, and shall submit a proposed schedule for the Court's approval. As it is in the interest of all parties that only the proper parties are named in the consolidated complaint, defendants shall produce within fourteen (14) days of the entry of this core ERISA documents and information that would enable Plaintiffs to accurately identify the specific persons who serve as plan fiduciaries. Discovery in this consolidated ERISA action is not stayed. For purposes of this Order and preliminary production, core ERISA documents are as follows: Plan documents and materials that describe the operation, administration, and management of the Plan; documents that identify the Plan fiduciaries and describe the scope of their fiduciary duties; and board or committee minutes and/or resolutions that pertain to the Plan and show the appointment or removal of Plan fiduciaries or otherwise demonstrate the fiduciary function of the board or any committee.

The Consolidated Complaint shall be the operative complaint and shall supersede all complaints filed in any of the actions consolidated herein. Pending filing and service of the Consolidated Complaint, defendants shall have no obligation to move, answer, or otherwise respond to any of the complaints in the above-captioned actions herein or any actions subsequently consolidated with them.

The same counsel shall further confer and propose to the Court a mutually agreeable schedule for briefing on issues related to class certification.

Dated: January \_\_\_\_\_, 2008

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Leonard B. Sand  
United States District Court Judge

Form of Order Submitted By:

Robert I. Harwood (RH-3286)  
Samuel K. Rosen (SR-3287)  
**HARWOOD FEFER LLP**  
488 Madison Avenue  
New York, New York 10022  
Telephone: (212) 935-7400  
Facsimile: (212) 753-3630

Proposed Interim Lead Counsel for Plaintiffs